

§ 1463.11

§ 1463.11 Appeals and judicial review.

(a) An entity may appeal any adverse determination made under this subpart, including with respect to the amount of the assessment, by submitting a written statement that sets forth the basis of the dispute by submitting such a request to the Executive Vice President, CCC, at 1400 Independence Avenue, SW., Room 4080-S, Washington DC 20250-0514, within 30 business days of the date of receipt of the notification by CCC of its determination.

(b) The Executive Vice President shall assign a person to act as the hearing officer on behalf of CCC. The duty of the hearing officer will be to develop an administrative record that will provide the Executive Vice President, or a designee, with sufficient information to render a final determination on the matter in dispute. The hearing to be conducted by the hearing officer will be an informal hearing at which the appellant may present oral and written evidence in support of the appellant's position. A copy of the rules of conduct that will be applicable to the proceeding will be provided to the appellant upon receipt of the appeal by CCC.

(c) With respect to any appeal filed under this section regarding an assessment imposed on a domestic manufacturer or importer of tobacco products, the rules of conduct will provide that within 30 calendar days of receiving the final submission of material by the appellant, CCC will render a final administrative decision. In the event CCC has not rendered a decision by such date, all administrative remedies available to the appellant shall be deemed to be exhausted.

(d) Any domestic manufacturer or importer of tobacco products aggrieved by a determination made by CCC under this subpart may seek review of the determination upon the exhaustion of the administrative remedies provided by this part in the United States District Court for the District of Columbia, or for the district in which such importer or manufacturer has its principal place of business.

7 CFR Ch. XIV (1-1-08 Edition)

Subpart B—Tobacco Transition Payment Program

SOURCE: 70 FR 17159, Apr. 4, 2005, unless otherwise noted.

§ 1463.100 General.

(a) The Commodity Credit Corporation (CCC) will make payments to tobacco quota holders and tobacco producers as provided in this subpart with respect to farms for which a tobacco marketing quota had been established by the Farm Service Agency (FSA). To be eligible for a payment, such person must meet all provisions of this part; submit to CCC an application provided by CCC to enter into a contract for payment; and submit other information as may be required by CCC. Payments will be made by CCC annually over a 10-year period.

(b) As provided in this part, a tobacco quota holder or tobacco producer who is not the subject of an outstanding claim established by the United States may, under the terms and conditions established by CCC and with the prior approval of CCC, enter into a successor in interest contract with another person or entity. Upon approval by CCC, all rights and obligations of the quota holder or producer, with respect to payments made by CCC under this part, will be terminated and transferred to the successor party.

(c) As provided in this part, a tobacco quota holder or tobacco producer who may, under the terms and conditions established by CCC, and with the prior approval of CCC, may assign the right to receive a payment to be made under this part by executing an assignment as provided in § 1463.111.

(d) Notwithstanding any other provision of this chapter, the provisions of 7 CFR parts 723 and 1464 shall not be applicable to the 2005 and subsequent crops and the 2005 and subsequent marketing years.

§ 1463.101 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out by FSA State and county committees (State and county committees).

(b) State and county committees and their representatives and employees have no authority to modify or waive provisions of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. Further, the Executive Vice-President, CCC, or designee, may modify any deadline in this subpart to the extent doing so is determined to be appropriate and consistent with the purposes of the program.

(e) A representative of CCC may execute a contract for a transition payment only under the terms and conditions of this part, and as determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and any person executing the contract.

§ 1463.102 Definitions.

The definitions in this section shall apply for all purposes of administering the Tobacco Transition Payment Program (TTPP) authorized by this subpart.

Act means the Fair and Equitable Tobacco Reform Act of 2004.

Actual marketings means tobacco that was disposed of in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons.

Actual undermarketings means the amount by which the effective quota is

more than the amount of tobacco marketed.

Assignee means the person designated by a tobacco quota holder or tobacco producer on the correct CCC form to receive a payment to be made by CCC under this subpart.

Assignor means the owner of a farm, or a producer on a farm, who has been determined by CCC to be eligible for a payment under this subpart and who has elected to assign to another person on the correct CCC form, the payment to be made by CCC under this subpart.

Average production yield means, for each kind of tobacco, other than burley (type 31) and flue-cured (types 11-14), the average of the production of a kind of tobacco in a county, on a per-acre basis, for the 2001, 2002, and 2003 crop years. For quota holders only, if no records are available to provide the average production of a kind of tobacco in a county, the average yield will be the production yield established by the National Agricultural Statistical Service of the Department of Agriculture (NASS) for the 2002 marketing year for the applicable kind of tobacco.

Basic allotment means the factored allotment plus and minus permanent adjustments.

Basic quota means the factored quota plus permanent adjustments.

Base Quota Level (BQL) means the payment pounds as determined under this subpart.

Calendar year means the twelve-months from January 1 through December 31.

Claim means any amount of money determined by any Federal agency to be owed by a tobacco quota holder or a tobacco producer to the United States, or any agency or instrumentality thereof, that has been the subject of a completed debt collection activity that is in compliance with the Debt Collection Improvement Act of 1996.

Considered planted means tobacco that was planted but failed to be produced as a result of a natural disaster, as determined by CCC.

Contract means a Tobacco Transition Payment Quota Holder Contract, a Tobacco Transition Payment Producer Contract, a Tobacco Transition Payment Quota Holder Successor In Interest Contract, or a Tobacco Transition